

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 2014-26535
Issue No(s): 3008; 5001; 7001
Case No.: [REDACTED]
Hearing Date: March 6, 2014
County: Wayne (57)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on March 6, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department or DHS) included [REDACTED], Eligibility Specialist.

ISSUES

Did the Department properly deny Claimant's State Emergency Relief (SER) application for non-heat electricity and heat on November 26, 2013?

Did the Department properly deny Claimant's Direct Support Services (DSS) application for a vehicle purchase on February 7, 2014?

Did the Department properly calculate Claimant's Food Assistance Program (FAP) allotment in the amount of \$15 effective December 1, 2013, ongoing?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant is an ongoing recipient of FAP benefits.
2. On October 5, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$15 effective November 1, 2013, ongoing. See Exhibit 1.

3. On November 21, 2013, Claimant applied for SER assistance with non-heat electricity and heat.
4. On November 26, 2013, the Department sent Claimant a SER Decision Notice, which denied her request for non-heat electricity (\$99.89) and heat (\$14.62) due to her countable income being higher than the maximum amount allowed for these programs. See Exhibit 1.
5. On January 29, 2014, Claimant applied for DSS assistance for a vehicle purchase request. See Exhibit 1.
6. On January 29, 2014, Claimant requested the DSS assistance for a vehicle purchase request in order to main current employment, however, Claimant also indicated that she has public transportation that is reasonably available for her. See Exhibit 1.
7. On February 7, 2014, the Department sent Claimant a Notice of Case Action notifying her that her DSS request for vehicle purchase was denied effective February 7, 2014 due to other resources are available to her for service. See Exhibit 1.
8. On February 7, 2014, Claimant filed a hearing request, protesting her SER denial, FAP allotment, and DSS denial. See Exhibit 1.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and by Mich Admin Code, R 400.7001 through R 400.7049.

Direct Support Services (DSS) is established by the Social Welfare Act, MCL 400.1-.119b. The program is administered by the Department pursuant to MCL 400.10 and 400.57a and Mich Admin Code R 400.3603.

SER application

Low-income households who meet all State Emergency Relief (SER) eligibility requirements may receive assistance to help them with household heat and electric costs. ERM 301 (October 2013), p. 1. When the group's heat or electric service for their current residence is in past due status, in threat of shutoff or is already shut off and must be restored, payment may be authorized to the enrolled provider. ERM 301, p. 1.

SER group members must use their available income and cash assets that will help resolve the emergency. ERM 208 (October 2013), p. 1.

There are no income copayments for SER energy services. ERM 208, p. 1. With respect to income, clients are either eligible or they are not. ERM 208, p. 1. For a group to be eligible for energy services, the combined monthly net income that is received or expected to be received by all group members in the 30-day countable income period, cannot exceed the standard for SER energy/LIHEAP services for the number of group members. ERM 208, p. 1. If the income exceeds the limit, the request must be denied. ERM 208, p. 1. Exhibit II, SER Income Need Standards for Energy Services states that the income need limit for a family size of two is \$1,938. ERM 208, p. 6.

On November 21, 2013, Claimant applied for SER assistance with non-heat electricity and heat. On November 26, 2013, the Department sent Claimant a SER Decision Notice, which denied her request for non-heat electricity (\$99.89) and heat (\$14.62) due to her countable income being higher than the maximum amount allowed for these programs. See Exhibit 1.

At the hearing, the Department did not provide a SER budget to show how Claimant's countable income was higher than the maximum amount allowed for these programs. Instead, the Department kept referencing the FAP budgets; however, the FAP budget does not properly reflect the SER calculations. Claimant agreed that her group size is two and her gross earned income amount is \$2,064. However, there are additional factors that are included in the SER budget to determine whether her countable income is higher than the maximum amount allowed for these programs. See ERM 208, pp. 1-6 and ERM 301, pp. 1 – 13.

The local office and client or AHR will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (March 2014), p. 36. Following the opening statement(s), if any, the ALJ directs the DHS case presenter to explain the position of the local office. BAM 600, p. 36. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, p. 36. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 39.

Based on the foregoing evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it failed to present any SER budget to show how it determined Claimant's countable income was higher than the maximum amount allowed for heat/electricity services. The Department failed to meet its burden of proof when it attempted to explain in its case presentation how it determined the SER calculations. The Department kept referencing the FAP budget for her calculations; however, the FAP budget is not an accurate representation of the SER calculations. The Department should have presented a SER budget to demonstrate how it believed Claimant's countable income was higher than the maximum amount allowed. Nevertheless, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it improperly denied Claimant's SER heat/electricity request on November 26, 2013.

DSS application

DHS assists families to achieve self-sufficiency. BEM 232 (October 2013), p. 1. The primary avenue to self-sufficiency is employment. BEM 232, p. 1. DHS and Partnership. Accountability. Training. Hope. (PATH) provides Direct Support Services (DSS) to help families become self-sufficient. BEM 232, p. 1.

There is no entitlement for DSS. BEM 232, p. 1. The decision to authorize DSS is within the discretion of the DHS or PATH program. BEM 232, p. 1. DSS supports FIP, CDC, MA and FAP Family, and FAP Non-Family. BEM 232, pp. 1-2. A FAP Family is an eligible group that includes a pregnant person, a child under age 18, or a child age 18 who is in high school full time. BEM 232, p. 2. In this case, Claimant has a child under the age of 18 and therefore, she is considered a FAP Family. See BEM 232, p. 2.

On January 29, 2014, Claimant applied for DSS assistance for a vehicle purchase request. See Exhibit 1. On January 29, 2014, Claimant requested the DSS assistance for a vehicle purchase request in order to main current employment, however, Claimant also indicated that she has public transportation that is reasonably available to her from and to work. See Exhibit 1. On February 7, 2014, the Department sent Claimant a Notice of Case Action notifying her that her DSS request for vehicle purchase was denied effective February 7, 2014 due to other resources are available to her for service. See Exhibit 1.

At the hearing, the Department testified that it denied Claimant's DSS request based on public transportation reasonably available to her. Claimant testified that she is need for the vehicle purchase to maintain her current employment. Moreover, Claimant testified that it is difficult to go to her employment because her employment requires her to be at several different location sites. Claimant also testified that she is to drop off her daughter at school. Claimant testified that the question was not clearly stated as to if the public transportation reasonably available to her. Claimant testified that she marked "yes" because she does have public transportation to get her to and from work.

For FAP Families, the Department authorizes up to \$2,000 to purchase, not lease, a vehicle to be used as a participant's primary means of transportation for work or employment-related activities. BEM 232, p. 16. Vehicle purchase is limited to once in a client's lifetime. BEM 232, p. 16. Prior approval by the Department is required for this service. BEM 232, p. 16.

A vehicle may be purchased for a currently employed client if the client needs a vehicle to accept a verified offer of a better job; or needs a vehicle to retain current employment; and has a demonstrated ability to maintain a job. BEM 232, p. 16.

In addition, the Department ensures all of the following before authorizing the purchase:

- Public transportation is not reasonably available (such as, considering the location and hours of the employment, child care or long commute as defined as good cause in BEM 233A), and the person has no other means to reach the job site reliably.

BEM 232, pp. 16-17.

Based on the foregoing information and evidence, the Department properly denied Claimant's DSS request for vehicle purchase on February 7, 2014, in accordance with Department policy. First, as stated above, there is no entitlement for DSS. BEM 232, p. 1. Second, before authorizing the purchase of a vehicle, the Department ensures that public transportation is not reasonably available and the person has no other means to reach the job site reliably. See BEM 232, pp. 16-17. Claimant testified that she takes several buses for her work location sites, the requirements of her employment, and her child goes to school are all reasons for the vehicle purchase request. However, on January 29, 2014, Claimant indicated on the application that she has public transportation that is reasonably available for her to and from work. See Exhibit 1. This presented contradictory testimony by the Claimant because her testimony inferred that her public transportation is not reasonably available. Instead, Claimant's application showed that she does have public transportation reasonably available to her and a vehicle purchase request is not necessary. Because the Claimant has public transportation reasonably available to her from and to work, the Department properly denied Claimant's DSS request for vehicle purchase on February 7, 2014, in accordance with Department policy. See BEM 232, pp. 1, 16, and 17.

FAP benefits

As a preliminary matter, Claimant is an ongoing recipient of FAP benefits. On October 5, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$15 effective November 1, 2013, ongoing. See Exhibit 1. During the hearing, Claimant testified that she was disputing her FAP allotment effective November 1, 2013 because her FAP benefits decreased to \$15. However, Claimant's

hearing request is dated February 7, 2014. See Exhibit 1. The Department's Notice of Case Action to Claimant notifying her of the FAP decrease to \$15 was dated October 5, 2013. Claimant's hearing request (dated February 7, 2014) was not timely filed within ninety days of the Notice of Case Action. Thus, this hearing lacks the jurisdiction to address Claimant's FAP allotment for November 2013. See BAM 600 (March 2014), p. 6.

Nevertheless, Claimant may request for a hearing to dispute the current level of FAP benefits. See BAM 600, p. 5. Thus, this hearing decision will address Claimant's FAP benefits effective December 1, 2013, ongoing. See BAM 600, p. 5.

It was not disputed that the certified group size is two and that the FAP group does not contain a senior/disabled/disabled veteran (SDV) member. The Department presented the December 2013 FAP budget for review. See Exhibit 1. The Department calculated Claimant's gross earned income to be \$2,064. See Exhibit 1. Claimant did not dispute this amount. Claimant testified that she earns \$12 an hour, works 40 hours a week, and is paid biweekly. Converting Claimant's biweekly pay to a standard monthly amount, results in a standard amount of \$2,064. See BEM 505 (July 2013), pp. 7-8.

The Department then applies a 20% earned income deduction for the Claimant. See BEM 550 (July 2013), p. 1. Twenty percent of \$2,064 is \$413. See Exhibit 1. This results in a post earned income deduction amount of \$1,651 (\$2,064 total income minus \$413 earned income deduction). See Exhibit 1. Additionally, the Department properly applied the \$151 standard deduction applicable to Claimant's group size of two. RFT 255 (December 2013), p. 1. Claimant also testified that she had medical expenses. For groups with one or more SDV member, the Department allows medical expenses for the SDV member(s) that exceed \$35. BEM 554 (July 2013), p. 1. In this case, though, Claimant's FAP group does not contain an SDV member. Thus, Claimant is not entitled to a medical deduction. See BEM 554, p. 1 and 8.

Once the Department applies the standard deduction, this results in an adjusted gross income amount of \$1,500. See Exhibit 1.

Finally, the Department presented an excess shelter budget from her Notice of Case Action (dated October 5, 2013), which indicated Claimant's monthly housing expense is \$412. See Exhibit 1. Claimant, though, testified that her monthly housing expense is \$494. A review of the December 2013 budget, though, indicated that the Department did apply the \$494 monthly housing expense. Even though a specific shelter budget was not provided, the Department's budget indicated a shelter deduction in the amount of \$297. The information below indicates how this amount is calculated.

The Department gives a flat utility standard to all clients responsible for utility bills. BEM 554, pp. 12-13. The utility standard of \$553 (see RFT 255, p. 1.) encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$553 amount.

Furthermore, the total shelter obligation is calculated by adding Claimant's housing expenses to the utility credit; this amount is found to be \$1,047 (\$494 housing expense plus \$553 heat/utility standard). Then, the Department subtracts the total shelter amount from fifty percent of the \$1,500 adjusted gross income. Fifty percent of the adjusted gross income is \$750. Furthermore, when the Department subtracts the total shelter amount from fifty percent of the gross income (\$1,047 shelter income minus \$750 1/2 the adjusted gross income), this results in an excess shelter deduction amount of \$297. See BEM 556, pp. 1-6. Thus, the Department properly calculated Claimant's excess shelter deduction amount of \$297. See Exhibit 1.

Finally, the Department subtracts the \$1,500 adjusted gross income from the \$297 excess shelter deduction, which results in a net income of \$1,203. See Exhibit 1. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Claimant's group size and net income, the Department properly determined that Claimant's FAP benefit issuance is found to be \$15. RFT 260 (December 2013), p. 16.

DECISION AND ORDER


The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department (i) failed to satisfy its burden of showing that it acted in accordance with Department policy when it improperly denied Claimant's SER heat/electricity request on November 26, 2013; (ii) acted in accordance with Department policy when it properly denied Claimant's DSS request for vehicle purchase on February 7, 2014; and (iii) acted in accordance with Department policy when it properly calculated Claimant's FAP benefits in the amount of \$15 effective December 1, 2013, ongoing.

Accordingly, the Department's decision is AFFIRMED IN PART with respect to the DSS denial for vehicle purchase on February 7, 2014 and FAP allotment for December 2013, ongoing, and REVERSED IN PART with respect to the SER heat/electricity decision dated November 26, 2013.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reregister the SER application dated November 21, 2013;
2. Begin reprocessing the application/recalculating the SER budget from the date of application and as the circumstances existed at the time of application, in accordance with Department policy;
3. Issue supplements to Claimant for any SER benefits she was eligible to receive but did not from the date of application; and

4. Notify Claimant in writing of its SER decision in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 10, 2014

Date Mailed: March 10, 2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

EJF/tlf

cc:

